



Department Of Executive Services  
Finance And Business Operations Division  
**Procurement And Contract Services Section**  
206-684-1681 Tty Relay: 711

# INVITATION TO BID

Advertised Date: June 23, 2005

ITB Title: **Allison Transmission Parts**  
ITB Number: **05-089 MM**  
Due Date: July 14, 2005- 2:00 P.M.  
Buyer: Michael McKinley, [michael.mckinley@metrokc.gov](mailto:michael.mckinley@metrokc.gov),  
206-684-2047

*This Contract will be funded in part by the Federal Transit Administration (FTA). Neither FTA nor the Federal Government are party to any sub-agreement nor to any solicitation or Invitation to Bid.*

PRE-BID CONFERENCE  
None

Sealed Bids are hereby solicited and will **ONLY** be received by:  
King County Procurement Services Section  
Exchange Building, 8<sup>th</sup> Floor  
821 Second Avenue  
Seattle, WA 98104-1598  
Office Hours: 8:00 a.m. - 5:00 p.m.  
Monday - Friday

**Bidders must complete and sign the form below (Type or Print)**

Company Name

Address

City / State / Postal Code

Authorized Representative / Title

Signature

Phone

Fax

Company Contact / Title

Email

Phone

Fax

Prompt Payment Discount Terms: \_\_\_\_ %- \_\_\_\_ Days, Net \_\_\_\_

This Invitation to Bid will be provided in alternative formats such as Braille, large print, audiocassette or computer disk for individuals with disabilities upon request.

# CONTRACT

THIS CONTRACT, made this \_\_\_\_ Day of \_\_\_\_, 2004 by and between King County, Washington, (hereinafter "County") and \_\_\_\_\_ (hereinafter "Contractor").

WITNESSETH:

WHEREAS, the County has caused Contract documents for:

**Contract No:**

**Contract Title:** Allison Transmission Parts

to be prepared for certain Work as described therein; and

WHEREAS, the Contractor has assured the County that it has the specialized expertise and experience necessary to properly Provide the goods and Services in a timely manner and that its Bid includes all of the functions and features required for the goods and Services; and

WHEREAS, the County has accepted the Contractor's offer to provide the goods and Services in accordance with the Contract's terms, Scope of Work and Bid documents;

WHEREAS, by executing this Contract, the Contractor represents that the waiver of the Contractor's immunity under industrial insurance, Title 51 RCW, as set forth in the Contract documents was mutually negotiated by the parties;

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the Contractor hereby agrees to supply the goods and Services at the price and on the terms and conditions herein contained, and to assume and perform all of the covenants and conditions herein required of the Contractor, and the County agrees to pay the Contractor the Contract price Provided herein for the supply of the goods and Services and the performance of the covenants set forth herein.

THE FURTHER TERMS, CONDITIONS AND COVENANTS of the Contract are set forth in the following exhibit parts each of which is attached hereto and by this reference made a part hereof in the following order of precedence; **[1]** Contract Amendments; **[2]** the Contract Document which includes: Cover (Page 1), Exhibit A – Bid Pricing, Exhibit B – Registration, Exhibit C – Buy America Certificate, Exhibit D – Contracting Opportunities Program, Definition of Words and Terms, Standard Contractual Terms and Conditions, Specific Contractual Terms and Conditions, Insurance Requirements, Federal Transit Administration (FTA) Requirements, Scope of Work, Attachments C) Equal Benefit Worksheet and Declaration Form, D) Personnel Inventory Report, E) Affidavit and Certificate of Compliance, I) Certificate of Lobbying Activities, J) Disclosure Form to Report Lobbying and Instructions, K) Certification Regarding Debarment, Suspension and Other Responsibility Matters – Primary Covered Transactions, L) Certification Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion – Lower-Tier Covered Transactions, O) Contractor's Insurance Forms; and **[3]** ITB Addenda

**COMPANY NAME:** \_\_\_\_\_

**ACCEPTED BY:**

**KING COUNTY APPROVED BY:**

\_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
*Name and Title (Print or Type)*

\_\_\_\_\_  
*Name and Title (Print or Type)*

**DATE ACCEPTED:** \_\_\_\_\_

**DATE APPROVED:** \_\_\_\_\_



## EXHIBIT A – BID PRICING

ITB NO: 05-089 MM

TITLE: Allison Transmission Parts

NAME OF BIDDER:

We acknowledge that **Addenda numbered** \_\_\_\_\_ **to** \_\_\_\_\_ have been delivered to us and have been examined as part of the Contract documents.

We acknowledge that attaching our terms or modifying the ITB terms may result in our bid being rejected.

The low bidder is defined as that bidder, meeting specifications that offers the highest percentage discount off of the list price listed in the current Allison Transmission Parts Price Schedule.

---

### Pricing Section

---

Bidders will bid a percentage discount off of the list price listed in the current Allison Transmission Parts Price Schedule.

Current Allison Transmission Parts Price Schedule, dated \_\_\_\_\_ %Discount

Bidder shall submit a copy of the above referenced price schedule with their bid.

---

### References Section

---

Company Name	1. _____	2. _____	3. _____
Company Address	_____	_____	_____
Company Phone	_____	_____	_____
Contact Person	_____	_____	_____
Dates	_____	_____	_____



King County

## EXHIBIT B – REGISTRATION

### Internal Revenue Service (IRS) Reporting Requirements:

**Check one:**

- ☐ Corporation      ☐ Partnership      ☐ Sole Proprietor  
☐ Other (please specify) \_\_\_\_\_

**Identify:**

Dun and Bradstreet Number:

*(Required for all federally  
funded procurements)*

State of Incorporation: \_\_\_\_\_

**Provide one:**

Federal Tax Number: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

What is the official name registered with the IRS for this number? \_\_\_\_\_

**Identify:**

UBI Number: \_\_\_\_\_ Business License Number: \_\_\_\_\_

### Prompt payment discount offered:

Percentage: \_\_\_\_\_ Days: \_\_\_\_\_ Standard payment is net 30 days. Evaluation Will be at the discounted prices if the time for the discount is not less than 20 days.

### Bidder Identification:

- ☐ Check if firm submitting Bid is a DBE certified by Washington State Office of Minority and Women's Business Enterprises.
- ☐ Check here if the firm submitting this bid is a King County certified Small Economically Disadvantaged Business (SEDB).



King County

## EXHIBIT C – BUY AMERICA CERTIFICATE Certificate of Compliance With Section 165(A)

The vendor hereby certifies that it **Will** comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations in 49 CFR Part 661.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company Name: \_\_\_\_\_

OR

## Certificate Of Noncompliance With Section 165(a)

The vendor hereby certifies that it cannot comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, as amended, but it may qualify for an exception to the requirement pursuant to Section 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act of 1982 and regulations in 49 CFR Part 661.7.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company Name: \_\_\_\_\_

It is important to remember that this Bid is funded in part by the FEDERAL TRANSIT ADMINISTRATION (FTA). In accordance with FTA requirements, each vendor Shall complete this Attachment H and submit it to the County with and as a part of their Bid.

### Par. 661.5 GENERAL REQUIREMENTS FOR STEEL AND MANUFACTURED PRODUCTS.

1. Except as provided in Part 661 no funds may be obligated by FTA for a grantee project unless all steel and manufactured products used in the project are produced in the United States.
2. All steel manufacturing processes must take place in United States, except metallurgical processes involving refine of steel additives.
3. The steel requirements apply to all steel items including, but not limited to, structural steel, running rail and contact rail.
4. For a manufactured product to be considered produced in the United States:
  - (a) All of the manufacturing processes for the product must take place in the United States; and
  - (b) All items or material used in the product must be of United States origin.

# TABLE OF CONTENTS

<b>COVER</b>	<b>1</b>
<b>CONTRACT</b>	<b>2</b>
<b>EXHIBIT A – BID PRICING</b>	<b>3</b>
<b>EXHIBIT B - REGISTRATION</b>	<b>4</b>
<b>EXHIBIT C- BUY AMERICA CERTIFICATE</b>	<b>5</b>
<b>DEFINITION OF WORDS AND TERMS</b>	<b>11</b>
<b>SECTION 1 - INSTRUCTIONS TO BIDDERS</b>	<b>12</b>
1-1 Introduction	12
1-2 Purpose of Bid	12
1-3 Bid Submission	12
1-4 Cancellation of ITB or Postponement of Bid Opening	12
1-5 ITB Signature	12
1-6 Addenda	12
1-7 Questions and Interpretation of the ITB	13
1-8 Inquiries	13
1-9 Alterations to Documents	13
1-10 Examination of Bid and Contract Documents	13
1-11 Modification of Bid or Withdrawal of Bid Prior to Bid Due Date	13
1-12 Cost of Bid	13
1-13 Bid Withdrawal	13
1-14 Bid Requirements	14
1-15 Forms Required Before Contract Signing	14
1-16 Collusion	15
1-17 Bid Price, Taxes and Effective Date	15
1-18 Protest Procedures	15
A. Form of Protest	15
B. Who May Protest	16
C. Time to Protest	16
D. Determination of Protest	16
E. Reconsideration of Manager's Decision	16
F. Failure to Comply	17
1-19 Supported Employment Program	17
1-20 Disadvantaged Business Enterprise (DBE) Participation	17
A. Nondiscrimination 49 CFR part 26	17
B. DBE Program	17
C. Efforts to Increase DBE Participation	17
D. DBE Listing	17
E. Procedure Applicable When DBEs Are Utilized	18
<b>SECTION 2 - BID EVALUATION &amp; CONTRACT AWARD</b>	<b>19</b>
2-1 Evaluation of Bids	19
A. Responsiveness	19

	<i>B. Responsibility</i> .....	19
	<i>C. Financial Resources</i> .....	20
	<i>D. Financial Reporting</i> .....	20
	<i>E. King County Contracting Opportunities Program</i> .....	20
<b>2-2</b>	Rejection of Bids .....	21
<b>2-3</b>	Procedures When Only One Bid is Received .....	21
<b>2-4</b>	Insurance And Other Bid Requirements.....	21
<b>2-5</b>	Public Disclosure of Bids.....	21
<b>2-6</b>	Contract Award.....	22
	<b>SECTION 3 - STANDARD CONTRACTUAL TERMS &amp; CONDITIONS .....</b>	<b>23</b>
<b>3-1</b>	Administration .....	23
<b>3-2</b>	Contract Changes .....	23
<b>3-3</b>	Cost or Price Analysis .....	23
<b>3-4</b>	Termination for Convenience/Default/Non-Appropriation .....	23
	<i>A. Termination of Convenience</i> .....	23
	<i>B. Termination of Default</i> .....	23
	<i>C. Termination of Non-Appropriation</i> .....	24
<b>3-5</b>	Force Majeure .....	24
<b>3-6</b>	Taxes, Licenses, and Certificate Requirements .....	25
<b>3-7</b>	Assignment .....	25
<b>3-8</b>	Indemnification and Hold Harmless .....	25
<b>3-9</b>	Applicable Law and Forum.....	26
<b>3-10</b>	Conflicts of Interest and Non-Competitive Practices .....	26
	<i>A. Conflict of Interest</i> .....	26
	<i>B. Contingent Fees and Gratuities</i> .....	26
<b>3-11</b>	Disputes, Claims and Appeals .....	26
<b>3-12</b>	Mediation and Arbitration .....	27
<b>3-13</b>	Retention of Records, Audit Access and Proof of Compliance with Contract.....	27
	<i>A. Retention of Records</i> .....	27
	<i>B. Audit Access</i> .....	27
	<i>C. Proof of Compliance with Contract</i> .....	28
<b>3-14</b>	Other Public Agency Orders.....	28
<b>3-15</b>	Recycled Products Policy.....	28
<b>3-16</b>	Conflicts of Interest - Current and Former Employers.....	28
<b>3-17</b>	Nondiscrimination and Equal Employment Opportunity .....	28
	<i>A. Nondiscrimination in Employment and Provision of Services</i> .....	28
	<i>B. Nondiscrimination in Subtracting Practices</i> .....	29
	<i>C. Compliance with Laws and Regulations</i> .....	29
	<i>D. Record-keeping Requirements and Site Visits</i> .....	29
	<i>E. Discrimination In Contracting</i> .....	29
<b>3-18</b>	Severability.....	29
<b>3-19</b>	Nonwaiver of Breach.....	30
<b>3-20</b>	Non-Discrimination in Benefits to employees with Domestic Partners.....	30
	<b>SECTION 4 - SPECIFIC CONTRACTUAL TERMS &amp; CONDITIONS.....</b>	<b>31</b>
<b>4-1</b>	Type of Contract.....	31
<b>4-2</b>	Contract Term.....	31

4-3	Contract Value .....	31
4-4	Payment Procedures.....	31
	A. <i>Invoices</i> .....	31
	B. <i>Payments</i> .....	31
	C. <i>Subcontractor Prompt Payment</i> .....	32
4-5	Advance Payment Prohibited .....	32
4-6	Purchase Orders .....	32
4-7	Pricing .....	32
4-8	Shipping Charges.....	32
4-9	Packing Slips.....	32
4-10	Delivery Points .....	33
4-11	Use Report .....	33
4-12	Warranty Provisions .....	33
	A. <i>No Waiver of Warranties and Contract Rights</i> .....	33
	B. <i>Warranty Term</i> .....	33
	C. <i>Warranty Applicable to Third Party Suppliers, Vendors, Distributors and Subcontractors</i> .....	33
4-13	Warranty Remedies.....	33
4-14	Defective Work .....	34
4-15	Independent Status of Contractor.....	34
4-16	Nondisclosure of Data .....	34
4-17	Non-Disclosure Obligation .....	34
4-18	Public Disclosure Requests.....	34
4-19	Pricing of Spare Parts.....	35
4-20	Product Return .....	35
4-21	No Prototype Components .....	35
4-22	Hazardous Chemical Communication .....	35
4-23	Industrial and Hazardous Waste .....	36
4-24	Prohibition on Asbestos-Containing Products .....	36
4-25	Patents and Royalties .....	36
4-26	Design Defects .....	36
4-27	Changed Requirements .....	37
	<b>SECTION 5 - INSURANCE REQUIREMENTS .....</b>	<b>38</b>
5-1	Evidence and Cancellation of Insurance .....	38
5-2	Insurance Requirements .....	38
	A. <i>The Contractor shall obtain and maintain the minimum insurance set forth</i> .....	38
	B. <i>Minimum Scope of Insurance</i> .....	38
	C. <i>Minimum Limits of Insurance</i> .....	39
	D. <i>Deductibles and Self-Insured Retentions</i> .....	39
	E. <i>Other Insurance Provisions</i> .....	39
	F. <i>Acceptability of Insurers</i> .....	39
	G. <i>Subcontractors</i> .....	40
	H. <i>Work Site Safety</i> .....	40
	I. <i>Endorsements</i> .....	40
	<b>SECTION 6 - FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS .....</b>	<b>41</b>
6-1	Applicability and Federal Grant Contract .....	41



6-2	No Federal Government Obligations to Third Parties .....	41
6-3	Disadvantaged Business Enterprise (DBE) Participation .....	41
6-4	Equal Employment Opportunity .....	41
6-5	Title VI Compliance .....	41
	<i>A. Nondiscrimination</i> .....	42
	<i>B. Solicitation for Subcontracts, Including Procurements of Materials and Equipment</i> .....	42
	<i>C. Information and Report</i> .....	42
	<i>D. Sanctions for Noncompliance</i> .....	42
	<i>E. Incorporation of Provisions</i> .....	42
6-6	Labor Provisions - Non-Construction Contracts .....	43
	<i>A. Overtime Requirements</i> .....	43
	<i>B. Violation. Liability for Unpaid Wages. Liquidated Damages</i> .....	43
	<i>C. Withholding for Unpaid Wages and Liquidated Damages</i> .....	43
	<i>D. Payrolls and Basic Records</i> .....	43
	<i>E. Subcontracts</i> .....	43
6-7	Cargo Preference – Use of U.S. Flag Vessels or Air Carriers .....	44
6-8	Audit and Inspection of Records .....	44
6-9	Buy America .....	44
6-10	FTA Protest Procedures .....	45
6-11	Privacy .....	45
6-12	Access Requirements for Individuals with Disabilities .....	45
6-13	Interest of Members or Delegates of Congress .....	46
6-14	Certification Regarding Debarment, Suspension and Other Responsibility Matters .....	46
6-15	Subcontractors' Certification Regarding Debarment, Suspension or Ineligibility .....	46
6-16	Disclosure of Lobbying Activities .....	47
6-17	Anti-Kickback .....	47
6-18	False or Fraudulent Statements or Claims .....	47
6-19	Conservation .....	47
6-20	Air Pollution .....	48
6-21	Environmental Requirements .....	48
	<i>A. Environmental Protection</i> .....	48
	<i>B. Air Quality</i> .....	48
	<i>C. Clean Water</i> .....	48
	<i>D. Use of Public Lands</i> .....	48
	<i>E. Historic Preservation</i> .....	48
	<i>F. Mitigation of Adverse Environmental Effects</i> .....	49
	<i>G. Energy Conservation</i> .....	49
6-22	Preference for Recycled Products .....	49
6-23	Incorporation of FTA Terms .....	49
	<b>SECTION 7 - TECHNICAL SPECIFICATIONS (STATEMENT OF WORK) .....</b>	<b>50</b>
7-1	General .....	50
7-2	OEM Allison Transmission Parts .....	50
7-3	Allison Transmission and Hybrid Electric Drive Models .....	50
7-3	Ordering Requirements/Delivery Requirements .....	50
7-4	Buy America .....	50
7-5	Site Visits/Business Plan .....	51

<b>7-6</b>	References.....	51
<b>7-7</b>	Price List .....	51

## DEFINITION OF WORDS AND TERMS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: Written documentation of the County's determination that the Contractor's Work has been completed in accordance with the Contract.

Addendum/Addenda: Written additions, deletions, clarification, interpretations, modifications or corrections to the solicitation documents issued by the County during the Solicitation period and prior to contract award.

Administrative Change: Documentation provided by County to Contractor, which reflects internal King County procedures not affecting the Contract terms or Scope of Work.

Bidder: Individual, association, partnership, firm, company, corporation or a combination thereof, including joint ventures, submitting a bid to perform the Work.

Buyer: Individual designated by the County to conduct the Contract solicitation process, draft and negotiate contracts, resolve contractual issues and support the Project Manager during Contract performance.

Change Documentation: A written document agreed upon by Project Managers, which if it creates a material change to the Contract term or Scope of Work shall be executed as a Contract Amendment.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms or scope of work, signed by both parties, with or without notice to the sureties.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between the County and the Contractor for completion of the Work under the Contract as set forth on Page 2 of this document.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the County for the performance of Services or Work under the Contract.

Day: Calendar Day.

Documentation: Technical publications relating to the use of the Work to be Provided by Contractor under this Contract, such as reference, user, installation, systems administration and technical guides, delivered by the Contractor to the County.

Final Acceptance: The point when King County acknowledges that the Contractor has preformed the entire Work in accordance with the Contract.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Provide: Furnish without additional charge.

RCW: The Revised Code of Washington.

Work: Everything to be provided and done for the fulfillment of the Contract and Shall include all Goods and Services specified under this Contract, including Contract Amendments and settlements.

## **SECTION 1 - INSTRUCTIONS TO BIDDERS**

### **1-1 Introduction**

The purpose of this Invitation for Bid is to establish a contract to provide Allison Transmission Parts, on an as-needed basis. Any quantities listed herein are for bidding purposes only and represent King County's estimated annual requirements. The County will be neither obligated nor restricted to the quantities or locations indicated. The bidder shall also include all printed information available for this service. See Section 7 for the Statement of Work.

### **1-2 Purpose of Bid**

This Invitation to Bid Will result in a Contract for indefinite quantities. By signing this Contract, King County does not guarantee that the Contractor Will receive any orders for the goods or services. In addition, King County is not giving the Contractor the exclusive right and legal obligation to fill all of the County's needs for the goods and services described in this Contract. King County reserves the right to Contract with any other entity for the goods or services described herein.

### **1-3 Bid Submission**

Sealed bids shall contain all required attachments and information, be sealed and submitted to the County (hereinafter "County"), Procurement and Contract Services Section, Mailstop EXC-ES-0871, Eighth Floor, Exchange Building, 821 Second Avenue, Seattle, Washington 98104-1598 no later than 2 p.m. Seattle time on July 14, 2005.

The Bidder accepts all risks of late delivery of mailed bids or of misdelivery regardless of fault. Bids properly and timely submitted Will be publicly opened.

Bids shall only be accepted from Contractors and joint ventures able to complete the Contract Work. Subcontractors and joint Bidders are not allowed to submit stand alone ITBs.

If a document holder chooses not to submit a bid, the document holder is requested to advise the Buyer by email if they desire to remain listed for the subject of this ITB and stating the reason they could not submit a bid at this time.

Note: This ITB is available on the Web at <http://www.metrokc.gov/finance/procurement> and by choosing the "RFPs, RFQs, ITBs" menu tab, then click the "New" menu tab, then click on "Goods & Services", and look for ITB 05-089 MM. Persons who copy the document from the Internet shall inform Michael McKinley that they have received the document. If they fail to inform the Buyer, they shall not be notified of Addenda as issued.

### **1-4 Cancellation of ITB or Postponement of Bid Opening**

The County reserves the right to cancel the ITB at any time or change the date and time for submitting bids by announcing same prior to the date and time established for bid submittal.

### **1-5 ITB Signature**

Each ITB submission shall include an Invitation to Bid cover page signed by an authorized representative of the Bidder.

### **1-6 Addenda**

Each bid shall include acknowledgment of receipt and review of all "**Addenda**" issued during the bid process in Exhibit A – Bid Pricing.

At any time, if the County changes, revises, deletes, clarifies, increases, or otherwise modifies the ITB, the County shall issue a written Addendum to the ITB.

## **1-7 Questions and Interpretation of the ITB**

No oral interpretations as to the meaning of the ITB shall be made to any Bidder. Questions, requests for interpretation, clarification, additions or deletions to the technical or contractual terms in this ITB shall be e-mailed to the Buyer at the County's Procurement Services Division at the location indicated in Subsection 1-8 at least ten (10) Days before the date established for submitting bids. Bidders shall not rely upon any oral statements or conversations, with county employees at the pre-bid conference.

Any interpretation deemed necessary by the County shall be in the form of an Addendum to the ITB and when issued shall be delivered as promptly as is practicable to all parties to whom the ITB has been issued. All Addenda shall become part of the ITB and any subsequently awarded Contract. Any changes to the ITB shall follow the Addenda process in Subsection 1-6.

## **1-8 Inquiries**

Inquiries concerning the procurement process shall be directed to Michael McKinley at e-mail address: [michael.mckinley@metrokc.gov](mailto:michael.mckinley@metrokc.gov) or at phone number (206) 684-2047 or FAX number (206) 684-1470 or in writing to the address on the front of this document.

COMMUNICATIONS CONCERNING THIS BID, WITH OTHER THAN THE LISTED BUYER MAY CAUSE THE BIDDER TO BE DISQUALIFIED.

## **1-9 Alterations to Documents**

Any addition, limitation or provision made with or attached to the Bid may render it non-responsive and/or irregular and be cause for its rejection. Alteration by erasure or interlineations must be explained or noted over the signature of the Bidder. No oral, telegraphic, Internet, telephonic or facsimile bids or modifications Will be considered.

## **1-10 Examination of Bid and Contract Documents**

The submission of a bid shall constitute an acknowledgment upon which the County may rely that the Bidder has thoroughly examined and is familiar with the ITB, including any work site identified in the ITB, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods and Services to be Provided hereunder.

The failure or neglect of a Bidder to receive or examine such documents, work sites, statutes, regulations, ordinances or resolutions shall in no way relieve the Bidder from any obligations with respect to it's bid or to any Contract awarded pursuant to this ITB. No claim for additional compensation shall be allowed which is based upon a lack of knowledge or misunderstanding of this ITB, work sites, statutes, regulations, ordinances or resolutions.

## **1-11 Modification of Bid or Withdrawal of Bid Prior to Bid Due Date**

At any time before the time and date set for submittal of bids, a Bidder may request to withdraw or modify its bid. Such a request shall be in writing signed by an authorized representative of Bidder as identified on the cover of the ITB. All bid modifications shall be made in writing, executed and submitted in the same form and manner as the original bid.

## **1-12 Cost of Bid**

The County is not liable for any costs incurred by Bidder in the preparation of bids submitted in response to this ITB.

## **1-13 Bid Withdrawal**

Except for claims of error granted by the County, no Bidder may withdraw a bid after the date and time established for submitting bids, or before the award and execution of a Contract pursuant to this ITB,

unless the award is delayed for a period exceeding the period for bid effectiveness. The County reserves the right to request a Bidder or Bidders to grant an extension of such effective period.

Requests to withdraw a bid due to error must be submitted in writing along with supporting evidence for such claim including cost breakdown sheets. Requests must be delivered to the County within forty-eight hours after the opening of Bids. The County reserves the right to require the submittal of other bid records or information, as the County may deem necessary to evaluate the request. Any review by the County of a bid and/or any review of such a claim of error, including supporting evidence, creates no duty or liability on the County to discover any other Bid error or mistake, and the sole liability for any Bid error or mistake rests with the Bidder.

#### **1-14 Bid Requirements**

The bid Will contain the completed:

- [Cover Page](#)
- [Contract](#)
- [Exhibit A](#) - Bid Pricing
- [Exhibit B](#) - Registration
- [Exhibit C](#) - Buy America Certificate

The above completed pages and all required additional documents Shall be placed in a sealed envelope with the enclosed sticker filled out and attached to the outside of the envelope.

#### **1-15 Forms Required Before Contract Signing**

The Bidder shall submit within five (5) Business Days of receipt of written request from the County the following documents and insurance and any applicable bonds, sworn statements, and other conditions precedent to formation of the Contract.

Failure by the Bidder to submit required documents shall result in rejection of the bid.

- [Attachment C](#) - Equal Benefit Worksheet and Declaration Form  
[http://www.metrokc.gov/finance/procurement/documents/U\\_042\\_EB\\_Worksheet\\_Declaration.doc](http://www.metrokc.gov/finance/procurement/documents/U_042_EB_Worksheet_Declaration.doc)
- [Attachment D](#) - Personnel Inventory Report – Complete, sign and submit.  
[http://www.metrokc.gov/finance/procurement/documents/IBIS\\_Attachments/ATTACHMENTD\\_Personnel\\_Inventory.doc](http://www.metrokc.gov/finance/procurement/documents/IBIS_Attachments/ATTACHMENTD_Personnel_Inventory.doc)
- [Attachment E](#) - Affidavit and Certificate of Compliance Regarding Equal Employment Opportunity – Complete, sign and submit.  
[http://www.metrokc.gov/finance/procurement/documents/IBIS\\_Attachments/ATTACHMENTE\\_CertificateOfCompliance.doc](http://www.metrokc.gov/finance/procurement/documents/IBIS_Attachments/ATTACHMENTE_CertificateOfCompliance.doc)
- [Attachment I](#) - Certificate of Lobbying Activities – Complete, sign and submit.  
[http://www.metrokc.gov/finance/procurement/documents/IBIS\\_Attachments/ATTACHMENTI\\_CertificateLobbyingActivities.doc](http://www.metrokc.gov/finance/procurement/documents/IBIS_Attachments/ATTACHMENTI_CertificateLobbyingActivities.doc)
- [Attachment J](#) - Disclosure Form to Report Lobbying and Instruction - Complete as appropriate, sign and submit.  
[http://www.metrokc.gov/finance/procurement/documents/IBIS\\_Attachments/ATTACHMENTJ\\_DisclosureForm\\_ReportLobbying.doc](http://www.metrokc.gov/finance/procurement/documents/IBIS_Attachments/ATTACHMENTJ_DisclosureForm_ReportLobbying.doc)

[Attachment K](#) - Certificate Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions. Complete, sign and submit.  
[http://www.metrokc.gov/finance/procurement/documents/IBIS\\_Attachments/ATTACHMENTK\\_Certification\\_Debarment.doc](http://www.metrokc.gov/finance/procurement/documents/IBIS_Attachments/ATTACHMENTK_Certification_Debarment.doc)

[Attachment L](#) - Certification Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion – Lower-Tier Covered Transactions. Signed by subcontractors after award of a Contract.  
[http://www.metrokc.gov/finance/procurement/documents/IBIS\\_Attachments/ATTACHMENTL\\_Certification\\_Debarment.doc](http://www.metrokc.gov/finance/procurement/documents/IBIS_Attachments/ATTACHMENTL_Certification_Debarment.doc)

Certificate of Insurance and Endorsements – Have Insurance Agent e-mail or Fax to Buyer evidence of insurance from insurer(s) satisfactory to the County certifying to the coverage of insurance set forth in this ITB.

Please contact the King County Procurement & Contracts Services Section at (206) 684-1681, or the buyer listed in this document to obtain a copy of these forms and/or have questions regarding their completion. Copies of the forms can also be viewed/downloaded by clicking on the hyperlinks above or visiting <http://www.metrokc.gov/finance/procurement/suppliers/forms.asp>.

#### **1-16 Collusion**

By signing this bid, the Bidder declares that they have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the work included in this ITB.

If the County determines that collusion has occurred among Bidders, none of the Bids from the participants in such collusion shall be considered. The County's determination shall be final.

#### **1-17 Bid Price, Taxes and Effective Date**

- A. The Bid price shall include everything necessary for the prosecution and completion of the Contract including but not limited to furnishing all Work including: materials, equipment, supplies, tools, plant and other facilities and all management, supervision, labor and service, except as may be Provided otherwise in this ITB.
- B. Bid Prices shall include all freight charges, FOB to the designated delivery points.
- C. Taxes: Sales/use taxes and Federal excise taxes shall not be included in the Bid price. The County shall pay any Washington State sales/use taxes applicable to the Contract price or tender an appropriate amount to the Contractor for payment to Washington State. The County is exempt from Federal excise taxes. All other government taxes, duties, fees, licenses, permits, royalties, assessments and charges shall be included in the bid price.
- D. In the event of a discrepancy between the unit price and the extended amount for a bid item, the unit price will govern.
- E. The bid shall remain in effect for 90 Days after the bid close date.

#### **1-18 Protest Procedures**

- A. Form of Protest:  
In order to be considered, a Protest shall be in writing, addressed to the Manager of the King County Procurement and Contract Services Section of the Department of Executive Services, and include:

1. The name, address, and phone number of the Bidder protesting, or the authorized representative of the Bidder;
  2. The ITB Number and Title under which the protest is submitted;
  3. A detailed description of the specific grounds for protest and any supporting documentation. It is the responsibility of the protesting Bidder to supplement its protest with any subsequently discovered documents prior to the Manager's decision; and
  4. The specific ruling or relief requested.
- B. Who May Protest.
1. Protests prior to bid due date based on Scope of Work or other terms in the ITB document -- any prospective Bidder.
  2. Protests following bid due date -- any Bidder submitting a bid on time.
- C. Time to Protest.
- Protests based on Scope of Work or other terms in the ITB document shall be received by the County no later than ten (10) Days prior to the date established for submittal of Bids. The County shall receive protests based on other circumstances within five (5) Days after the protesting Bidder knows or should have known of the facts and circumstances upon which the Protest is based. In no event shall a Protest be considered if all Bids are rejected or after award of the Contract.
- D. Determination of Protest.
- Upon receipt of a timely written Protest, the Procurement Manager shall investigate the Protest and shall respond in writing to the Protest prior to the award of Contract. Except as Provided below, the decision of the Procurement Manager shall be final.
- E. Reconsideration of Manager's Decision.
- A financially interested Bidder or Contractor may request that a Manager's adverse decision be reviewed by the Director, of the King County Finance and Business Operations Division ("Director") on a reconsideration basis only. The only justifications for reconsideration are (1) new data, relevant to the underlying grounds for protest and unavailable at the time of the Protest to the Manager; or (2) the Manager made an Error of law or regulation. The following procedures shall be followed for a reconsideration of the Manager's decision:
1. Form of Request for Reconsideration. In order to be considered, a Request for Reconsideration shall be filed with the Director in writing and include:
    - a. Name, address, and telephone number of the Person protesting or their authorized representative;
    - b. A copy of the written decision of the Manager; and
    - c. Justification for reconsideration by the Director, including all pertinent facts and law on which the Bidder is relying.
  2. Time for filing Request for Reconsideration. The financially interested Bidder shall file the Request for Reconsideration no later than five (5) Days of receiving the Procurement Manager's decision.
  3. Review of Manager's Decision. Upon receipt of a Request for Reconsideration, the Director or his/her designee shall review 1) the information submitted to and reviewed by the Manager and 2) the decision of the Manager, and shall thereafter issue a final determination regarding the Request for Reconsideration. No other information shall be reviewed unless the basis for the request for reconsideration is new data.



**F. Failure to Comply**

Failure to comply with the procedures set forth herein may render a Protest untimely or inadequate and may result in rejection thereof by the County.

**1-19 Supported Employment Program**

The County encourages the creation of supported employment programs for developmentally and/or severely disabled individuals. The County itself has such a program and is actively seeking to do business with those Contractors and Consultants that share this employment approach. If your firm has such a program, or intends to develop such a program during the life of this Contract, please submit Documentation supporting this claim with your bid. If you have questions, or need additional information, please contact the Community and Human Services Division, Developmental Disabilities Division, 206-296-5268.

**1-20 Disadvantaged Business Enterprise (DBE) Participation**

**A. Nondiscrimination 49 CFR part 26.**

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of United States Department of Transportation assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the County deems appropriate.

**B. DBE Program.**

The County has determined that no DBE goal shall be established for this Contract. However, the County requires that the Contractor report any actual DBE participation on this Contract to enable the County to accurately monitor DBE program compliance.

**C. Efforts to Increase DBE Participation.**

Even though this Contract has no DBE goal, the County still encourages Contractors to pursue opportunities for DBE participation. To that end, Contractors are encouraged to:

1. Advertise opportunities for subcontractors and suppliers ("subcontractors") in a manner reasonably designed to provide DBEs capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by DBE firms and may be done through general advertisements (e.g., newspapers, journals, etc.) or by soliciting Proposals directly from DBEs.
2. Utilize the services of available minority community organizations, minority consultant groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of DBEs and other small businesses.
3. Establish delivery schedules, where requirements of the contract allow and encourage participation by DBEs and other small businesses.
4. Achieve DBE attainment through joint ventures.

**D. DBE Listing.**

A current list of DBE firms accepted as certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) is available from that office at (360) 753-9693. For purposes of this Contract, a DBE firm shall be certified by OMWBE as of the date and time of bid submittal.

E. Procedure Applicable when DBEs Are Utilized.

Concurrent with the use of any DBE subcontractor or supplier the Contractor shall provide notice of such use in writing to the King County Business Development and Contract Compliance Section (BDCC). Upon receipt of said notice, BDCC shall provide the Contractor with the applicable procedures for counting DBE participation. Assistance with this Section is available from BDCC at (206) 205-0700. Notice referenced herein should be delivered to the following address:

King County  
Business Development and Contract Compliance Section  
Office of Business Relations and Economic Development  
Bank of America Tower  
M.S. KCC-EX-0402  
700 5<sup>th</sup> Avenue, 20<sup>th</sup> Floor, Suite 2000  
Seattle, WA 98104  
Phone: 206-205-0700  
Fax: 206-205-0719

## SECTION 2 - BID EVALUATION & CONTRACT AWARD

### 2-1 Evaluation of Bids

Bids Will be evaluated by the County to determine which bid, if any, should be accepted in the best interest of the County. When Exhibit D, "King County Contracting Opportunities Program", is incorporated in the ITB, the determination of lowest responsive, responsible bidder Will include the application of the five (5) percent incentive factor for Small Economically Disadvantaged Businesses (SEDB).

#### A. Responsiveness

The County Will consider all the material submitted by the Bidder to determine whether the Bidder's offering is in compliance with the terms and conditions set forth in this ITB.

#### B. Responsibility

1. The County shall consider all the material submitted by the Bidder, and other evidence it may obtain otherwise, to determine whether the Bidder is capable of and has a history of successfully completing contracts of this type. This may include requiring the Bidder to Provide references from customers who have been Provided the same or equivalent Goods or Services. References shall include the names and addresses of the parties to whom such goods or Services were Provided and the name and phone number of contact Persons with such parties.
2. The following elements shall be given consideration by the County in determining whether a Bidder is responsible:
  - a. The ability, capacity and skill of the Bidder to perform the Contract or Provide the service required;
  - b. The character, integrity, reputation, judgment and efficiency of the Bidder;
  - c. Whether the Bidder has the financial resources and experience to perform the Contract properly and within the times specified;
  - d. The quality and timeliness of performance by the Bidder on previous contracts with the County and with other third parties, including, but, not limited to, the relative costs, burdens, time and effort necessarily expended by the County and such governments and agencies in securing satisfactory performance and resolving claims;
  - e. The previous and existing compliance by the Bidder with laws relating to public contracts or Services, including, but not limited to, Disadvantaged Business Enterprise (DBE) and equal employment opportunity requirements;
  - f. The history of the Bidder in filing claims and litigation on prior projects involving the County or third parties; and
  - g. Such other information having a bearing on the decision to award the Contract.
3. Financial Resources

Submit proof of adequate financial resources, which would be available to the Bidder for the prosecution, and completion of the Work as required. Refusal to Provide such information when requested shall cause the bid to be rejected.

When requested, the required financial information shall include:

- a. Audited financial statements such as balance sheets, statements of income, statements of cash flow and stockholders' equity for each of the three most recently completed fiscal years, including notes to financial statements, independent accountants' reports and annual reports to stockholders;

- b. Documentation of an open line of credit or other arrangement with an established bank under which adequate financing would be available for prosecution and completion of the Work called for hereunder;
- c. Certification by the principal financial officer of or an independent accountant for the Bidder, stating that the Bidder has adequate financial resources for the prosecution and completion of the Work called for hereunder; and
- d. The names, addresses and telephone numbers of at least one contact in the company's principal financial or banking organization and its independent auditor.
- e. Acceptable evidence of its ability to perform, such as firm commitments by Subcontractors, equipment, supplies and facilities, and the Bidder's ability to obtain the necessary personnel.

C. Financial Resources

If requested by the County after Bid opening, the Bidder Shall submit proof of adequate financial resources which would be available to the Bidder for the prosecution and completion of the Work as required. When requested, the required financial information Shall include:

- 1. Audited financial statements such as balance sheets, five (5) successive statements of income, statements of cash flow and stockholders' equity, for each of the most recently completed fiscal years, including notes to financial statements, independent accountants' reports and annual reports to stockholders;
- 2. Documentation of an open line of credit or other arrangement with an established bank under which adequate financing would be available for prosecution and completion of the Work called for hereunder;
- 3. Certification by the principal financial officer of or an independent accountant for the Bidder, stating that the Bidder has adequate financial resources for the prosecution and completion of the Work called for hereunder;
- 4. The names, addresses and telephone numbers of at least one contact in the company's principal financial or banking organization and its independent auditor; and
- 5. The Bidder Shall supply when requested written authorization for the County to contact the bank and the independent accountant, and written authorization requiring the bank and independent accountant to Provide the information to the County regarding financial capability.

D. Financial Reporting

The Bidder Shall Provide a current copy of its Dun and Bradstreet report if requested by the County.

E. King County Contracting Opportunities Program

- 1. The King County Contracting Opportunities Program is a public contracting assistance program that is being implemented on a one (1) year pilot basis. The purpose of the Program is to maximize the participation of Small Economically Disadvantaged Businesses through the use of a five percent (5%) incentive factor in the award of King County contracts for the purchase of goods and services.
- 2. A "Small Economically Disadvantaged Business: (SEDB) means that a business and the person or persons who own and control it are in a financial condition which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Program is based on a dollar ceiling for standard business classification that is set at fifty percent (50%) of the Federal Small Business Administration (SBA) and Owner's Personal Net Worth less than \$750K dollars.

3. A "Certified Firm" means a business that has applied for participation in King County's Contracting Opportunities Program, and has been certified as an SEDB by the King County Business Development and Contract Compliance (BDCC) office. Information about becoming a Certified Firm, as well as a list of Certified Firms, may be obtained by contacting the BDCC office at (206) 205-0700.

## **2-2 Rejection of Bids**

- A. The County reserves the right to reject any bid for any reason including, but not limited to, the following:
  1. Any bid which: 1) contains any omission, erasure or irregularity; 2) is incomplete, obscure, irregular or lacking necessary detail and specificity; 3) has any qualification, addition, limitation or provision attached to the bid; 4) omits a price where pricing is required; 5) has unbalanced pricing in the opinion of the County, 5) is not approved as being compliant with the requirements for equal employment opportunity or Domestic Partner Benefits;
  2. Any bid from Bidders who: in the sole judgment of the County) lack the qualifications or responsibility necessary to perform the Work; 2) fails or neglects to complete and submit any qualifications information within the time specified by the County, 3) is not registered or licensed as may be required by the laws of the state of Washington or local government agencies;
- B. In consideration for the County's review and evaluation of its bid, the Bidder waives and releases any claims against the County arising from any rejection of any or all bids, including any claim for costs incurred by Bidders in the preparation and presentation of bids submitted in response to this ITB. In addition, Bidders waive the costs of providing additional information requested or cost of modifications made to its internal structure, systems or organizations.
- C. The County reserves the right to waive informalities and irregularities in bids.
- D. The County Shall find non-responsive and reject any bid which does not comply with the DBE requirements under this ITB, if applicable.

## **2-3 Procedures When Only One Bid is Received**

If the County receives a single responsive, responsible bid, the County Shall have the right, in its sole discretion, to extend the bid acceptance period and may conduct a price or cost analysis on such bid. The Bidder Shall promptly Provide all cost or pricing data, documentation and explanation requested by the County to assist in such analysis. By conducting such analysis, the County shall not be obligated to accept the single bid; the County reserves the right to reject such bid or any portion thereof.

## **2-4 Insurance And Other Bid Requirements**

The Bidder to whom the County awards a Contract pursuant to this ITB shall file with the County evidence of insurance from insurer(s) satisfactory to the County certifying to the coverages of insurance set forth in this ITB. In addition any applicable bonds, sworn statements, and other conditions precedent to formation of the Contract shall be submitted within ten (10) Days of receipt of a written request from the County.

Failure by the Bidder to submit satisfactory evidence of insurance and other required condition precedent documents shall result in rejection of the bid.

## **2-5 Public Disclosure of Bids**

This procurement is subject to the Washington Public Disclosure Act, RCW 42.17.250 et seq. Bids submitted under this ITB shall be considered public documents unless the documents are exempt

under the public disclosure laws. After the selection process has been concluded and a contract has been signed by both parties bids shall be available for inspection and copying by the public

If a Bidder considers any portion of its bid to be protected under the law, the Bidder shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If the County determines that the material is not exempt from public disclosure law, the County shall notify the Bidder of the request and allow the Bidder fifteen (15) Days to take whatever action it deems necessary to protect its interests. If the Bidder does not take such action within said period, the County shall release the portions of the bid deemed subject to disclosure. By submitting a bid, the Bidder assents to the procedure outlined in this subsection and shall have no claim against the County on account of actions taken under such procedure.

## **2-6 Contract Award**

Contract award, if any, shall be made by the County to the low, responsive, responsible Bidder. The County shall have no obligations until a Contract is signed between the Bidder and the County. The County reserves the right to award one or more contracts as it determines to be in its best interest.

## **SECTION 3 - STANDARD CONTRACTUAL TERMS & CONDITIONS**

### **3-1 Administration**

This Contract is between the County and the Contractor who shall be responsible for providing the Work described herein. The County is not party to defining the division of Work between the Contractor and its Subcontractors, if any, and the Scope of Work has not been written with this intent. The Contractor represents that it has or shall obtain all personnel, materials and equipment required to perform Work hereunder.

The Contractor's performance under this Contract may be monitored and reviewed by a Project Manager appointed by the County. Reports and data required to be Provided by the Contractor shall be delivered to the Project Manager. Questions by the Contractor regarding interpretation of the terms, provisions and requirements of this Contract shall be addressed to the Buyer or Project Manager for response.

### **3-2 Contract Changes**

No oral order or conduct by the County shall constitute a Contract change. Both parties shall agree to contract changes in writing.

If any Contract change causes an increase or decrease in the cost of, or the time required for performance of any part of the Work under this Contract, an equitable adjustment in the Contract price, the project schedule, or both shall be made and the Contract and all related purchase orders(s) modified and agreed to in writing by both parties. Every contract change may require a Cost or Price Analysis to determine the reasonableness of the proposed adjustments to Contract price or schedule. Contract changes do not require notice to sureties by County.

### **3-3 Cost or Price Analysis**

Cost or Price Analysis may be required by the County for the evaluation of contract changes, terminations, revisions to contract requirements or other circumstances as determined by the County.

### **3-4 Termination for Convenience/Default/Non-Appropriation**

#### **A. Termination for Convenience**

The County for its convenience may terminate this Contract, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Contractor. After receipt of a Notice of Termination ("Notice"), and except as directed by the County, the Contractor shall immediately stop Work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor shall be paid its costs, including necessary and reasonable Contract close-out costs and profit on that portion of the Work satisfactorily performed up to the date of termination as specified in the notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to the County, the Contractor shall account for the same and dispose of it in the manner the County directs. All termination payment requests may be subject to Cost or Price Analysis to determine reasonableness and compliance with the Contract, applicable laws and regulations.

#### **B. Termination for Default**

If the Contractor does not deliver Work in accordance with the Contract, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

1. A Notice to Cure shall be served on the Contractor by certified mail (return receipt requested) or delivery service capable of providing a receipt. The Contractor shall have ten (10) Days to cure the default or provide the County with a detailed written plan, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, the County may terminate the Contract Termination shall occur by serving a Notice of Termination by certified mail (return receipt requested) or delivery service capable of providing a receipt on the Contractor setting forth the manner in which the Contractor is in default and the effective date of termination;
3. The Contractor shall only be paid for Work delivered and Accepted, or Work performed in accordance with the manner of performance set forth in the Contract less any damages to the County caused by or arising from such default. All termination payment requests are subject to Cost or Price Analysis to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

C. Termination for Non-Appropriation

If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Contract or in any amendment hereto, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part.

In accordance with King County Code 4.04.040B.6, payment shall not exceed the appropriation for the year in which termination is effected. If the Contract is terminated for non-appropriation:

1. The County shall be liable only for payment in accordance with the terms of this Contract for Services rendered prior to the effective date of termination; and,
2. The Contractor shall be released from any obligation under this contract or a related Purchase Order to Provide further Work pursuant to the Contract as are affected by the termination.

Funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

### **3-5 Force Majeure**

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event or any other cause not within such party's control, to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including Termination for Default.



### **3-6 Taxes, Licenses, and Certificate Requirements**

This Contract and any of the Work Provided hereunder is contingent and expressly conditioned upon the ability of the Contractor to provide the specified goods or Services consistent with applicable federal, state or local laws and regulations. If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the County immediately of such condition in writing.

The Contractor and subcontractor(s) shall maintain and be liable for all taxes (except sales/use taxes), fees, licenses permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to provide the Work under this Contract.

### **3-7 Assignment**

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender so long as King County Policy Fin10-1 (AP), paragraph 6.1.3 is followed. An assignment shall be accepted by either party upon the posting of all required bonds, securities and the like by the assignee, and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

### **3-8 Indemnification and Hold Harmless**

In providing services under this Contract, the Contractor is an independent contractor, and neither the Contractor nor its officers, agents or employees are employees of the County for any purpose. The Contractor shall be responsible for all federal and/or state tax, industrial insurance and Social Security liability that may result from the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a County employee under state or local law.

The County assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by or on behalf of the Contractor, its employees and/or others by reason of this Contract. The Contractor shall protect, indemnify, defend and save harmless the County and its officers, agents and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Contractor's failure to pay any such compensation, wages, benefits or taxes; and/or (2) the supplying to the Contractor work, services, materials, and/or supplies by Contractor employees or other suppliers in connection with or in support of the performance of this Contract.

The Contractor further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception which occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Duration of Contract, or the Termination section.

The Contractor shall protect, defend, indemnify, and save harmless the County, [and the State of Washington or US Government (when any funds for this Contract are provided by them )], their officers, employees, and agents from any and all costs, fees (including attorney fees), claims, actions, lawsuits, judgments, awards of damages or liability of any kind, arising out of or in any way resulting from the negligent acts or omissions of the Contractor, its officers, employees, subcontractors of any tier and/or agents. The Contractor agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, subcontractors of any tier or agents.

In addition to injuries to persons and damage to property, the term "claims," for purposes of this paragraph C, shall include, but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.

For purposes of paragraphs A and C above, the Contractor, by mutual negotiation, hereby waives, as respects the County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

In the event the County incurs attorney fees and/or costs in the defense of claims within the scope of paragraphs A and C above, such attorney fees and costs shall be recoverable from the Contractor. In addition King County shall be entitled to recover from the Contractor its attorney fees, and costs incurred to enforce the provisions of this section.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Contract.

Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

### **3-9 Applicable Law and Forum**

Except as hereinafter specifically provided, this Contract shall be governed by and construed according to the laws of the State of Washington, including, but not limited to, the Uniform Commercial Code, Title 62A RCW. Any claim or suit concerning this Contract may only be filed in either the King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

### **3-10 Conflicts of Interest and Non-Competitive Practices**

#### **A. Conflict of Interest**

By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the County. The County shall require that the Contractor take immediate action to eliminate the conflict up to and including termination for default.

#### **B. Contingent Fees and Gratuities**

By entering into this Contract to perform Work, the Contractor represents that:

1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

### **3-11 Disputes, Claims and Appeals**

The Contractor shall address questions or claims regarding the Contract in writing to the Buyer and Project Manager, within ten (10) Days of the date in which the Contractor knows or should know of the

question or claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. No claim shall be allowed for any costs incurred more than ten (10) Days before the Contractor gives written notice, as required in this section. The Buyer and Project Manager shall ordinarily respond to the Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager.

In the event the Contractor disagrees with the determination of the Buyer and Project Manager, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Contract Services Section Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement and Contract Services Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Contract Services Section Manager shall be a condition precedent alternative dispute resolution or litigation.

Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to the County.

### **3-12 Mediation and Arbitration**

Nothing in this subsection precludes any party from seeking relief from King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle. If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, may be resolved by arbitration, and judgment upon the award rendered by the arbitrator may be entered in either King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle.

### **3-13 Retention of Records, Audit Access and Proof of Compliance with Contract**

#### **A. Retention of Records**

The Contractor and its subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

#### **B. Audit Access**

1. Federal, state or County auditors shall have access to Contractor's and its Subcontractors' records for the purpose of inspection, Cost or Price Analysis, audit or other reasonable purposes related to this Contract. Federal, state or County auditors shall have access to records and be able to copy such records during the Contractor's normal business hours. The Contractor shall Provide proper facilities for such access, inspection and copying.
2. Audits may be conducted during or after the Contract period for purposes of evaluating claims by or payments to the Contractor and for any other reason deemed appropriate and necessary by the County. Audits shall be conducted in accordance with generally accepted auditing principles and/or federal, state or County audit procedures, laws or regulations. The Contractor shall fully cooperate with the auditor(s).
3. If an audit is commenced more than sixty (60) Days after the date of final payment for Contract Work, the County shall give reasonable notice to the Contractor of the date on which the audit shall begin.

C. Proof of Compliance with Contract

The Contractor shall, upon request, Provide the County with satisfactory documentation of the Contractor's compliance with the Contract.

In addition, the Contractor shall permit the County, and if federally funded, the FTA and the Comptroller General of the United States, or a duly authorized representative, to inspect all Work, materials, payrolls and other data and records involving the Contract.

**3-14 Other Public Agency Orders**

Other federal, state, county and local entities may utilize the terms and conditions established by this Contract. The County does not accept any responsibility or involvement in the purchase orders or contracts issued by other public agencies.

**3-15 Recycled Products Policy**

The County promotes the purchase and utilization of recycled material and products where available. Recycled material means material and byproducts, which have been recovered or diverted from solid waste disposal for the purpose of recycling. It does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the event of similar pricing, availability and other factors affecting the solicitation, preference may be given to products containing recycled material.

Ref: KCC 10.14

**3-16 Conflicts of Interest - Current and Former Employers**

The County seeks to eliminate and avoid actual or perceived conflicts of interest and unethical conduct by current and former County employees in transactions with the County. Consistent with this policy, no current or former County employee may contract with, influence, advocate, advise, or consult with a third party about a County transaction, or assist with the preparation of Proposals submitted to the County while employed by the County or within one (1) year after leaving the County's employment, if he/she participated in determining the Work to be done or process to be followed while a County employee.

All Bidders, vendors or Contractors who anticipate contracting with the County shall identify at the time of offer, such current or former County employees involved in preparation of bids or the anticipated performance of the Work if awarded the Contract. Failure to identify former County employees involved in this transaction may result in the County's denying or terminating this Contract. In addition, after award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract

Ref: KCC 3.04.015C; 3.04.035B; 3.04.035D; 3.04.035E; 3.04035H1; 3.04.035H2.

**3-17 Nondiscrimination and Equal Employment Opportunity**

A. Nondiscrimination in Employment and Provision of Services.

During the performance of this Contract, neither the Contractor nor any party subcontracting under the authority of this Contract shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract. King County Code Chapter 12.16 is incorporated herein by reference, and such requirements shall apply to this Contract.

**B. Nondiscrimination in Subcontracting Practices.**

During the solicitation, award and term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

**C. Compliance with Laws and Regulations.**

The Contractor shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit discrimination.

Unfair Employment Practices. King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract.

**D. Record-keeping Requirements and Site Visits.**

The County may, at any time, visit the project site, Contractors' and Subcontractors' offices to review records related to the solicitation, utilization, and payment to subcontractors and suppliers in compliance with Executive Order 11246 as amended by Executive Order 11375. This provision includes compliance with any other requirements of this Section. The Contractor shall provide all reasonable assistance requested by King County during such visits. The Contractor shall maintain, for six (6) years after completion of all work under this Contract, the following:

1. Records, including written quotes, bids, estimates or proposals submitted to the Contractor by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payment to subcontractors and suppliers in this Contract.
2. The Contractor shall make the foregoing records available to King County for inspection and copying upon request. Any violation of the mandatory requirements of the provisions of this subsection shall be a material breach of contract, which may result in termination of this Contract or such other remedy as the County deems appropriate, including but not limited to damages or withholding payment.

**E. Discrimination In Contracting**

King County Code Chapter 12.17 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract. During the performance of this Contract, neither Contractor nor any party subcontracting under the authority of this Contract shall discriminate or engage in unfair contracting practices prohibited by KCC 12.17.

**3-18 Severability**

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

### **3-19 Nonwaiver of Breach**

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

### **3-20 Non-Discrimination in Benefits to employees with Domestic Partners**

King County's Equal Benefits (EB) Ordinance 14823 states that to be eligible for award of contracts at a cost of \$25,000.00 or more, firms must not discriminate in the provisions of employee benefits between employees with spouses, and employees with domestic partners. The successful Contractor, bidder or proposer shall be required to complete a Worksheet and Declaration form. Compliance with Ordinance 14823 is a mandatory condition for execution of a contract. The EB Compliance forms, and Ordinance 14823 are available online at:

[http://www.metrokc.gov/finance/procurement/documents/U\\_042\\_EB\\_Worksheet\\_Declaration.doc](http://www.metrokc.gov/finance/procurement/documents/U_042_EB_Worksheet_Declaration.doc)

## SECTION 4 - SPECIFIC CONTRACTUAL TERMS & CONDITIONS

### 4-1 Type of Contract

This ITB may result in the award of one or more Contracts. King County Will utilize these Contracts as indefinite quantities Contracts and issue standard purchase orders to the Contractor citing item number, description, deliver terms and Contract price. The standard purchase orders Will be the authorization for the Contractor to perform the service or deliver the goods as directed.

### 4-2 Contract Term

The term of this Contract shall be five (5) years in one (1) year increments, commencing on the effective date of the Contract and subject to the termination provisions at subsection 3-4 or as described in the Scope of Work. The maximum term for this Contract, consisting of the base period plus extensions, is five (5) years unless extended by written agreement signed by all parties.

### 4-3 Contract Value

The estimated annual value of this Contract is approximately \$800,000 per year. King County Will not be limited, restricted or bound by this dollar value, nor Shall the County be obligated to purchase any items contained in this Contract.

### 4-4 Payment Procedures

#### A. Invoices

The Contractor for Work Accepted by the County shall furnish invoices to:

King County Accounts Payable  
M/S EXC-ES-0875  
Exchange Building, 8<sup>th</sup> floor  
821 Second Avenue  
Seattle, WA 98104-1598

**Important** – When a purchase order is issued against this Contract that has the potential for multiple or partial deliveries, a separate invoice shall be generated for each completed delivery Accepted by the County. All invoices shall include the following information: purchase order number, requester's name and phone number, date of invoice, invoice number and invoice total. For each item in the Contract provide the: item number, quantity, description, contract price and when applicable provide the manufacture, list price and discounts. For Services identify from the bid, either milestone Acceptance or hourly rates, hours worked, total hours or related fees.

**FAILURE TO COMPLY WITH THESE REQUIREMENTS OR TO PROVIDE AN INVOICE IN CONFORMANCE WITH THE CONTRACT MAY DELAY PAYMENT.**

#### B. Payments

Within thirty (30) Days after receipt of an invoice, the County shall pay the Contractor for accepted Work, upon acceptance of payment Contractor waives any claims for the Work covered by the Invoice.

If the Contractor is registered with the State of Washington it shall add all applicable State sales/use taxes to each invoice and upon receipt of the payment promptly remit appropriate amounts to Washington, or the County will make payment directly to the State.

C. Subcontractor Prompt Payment

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its subcontract no later than ten (10) Days from the receipt of each payment the Contractor receives from the County.

**4-5 Advance Payment Prohibited**

No advance payment shall be made for the Work furnished by Contractor pursuant to this Contract.

**4-6 Purchase Orders**

Purchase orders shall be issued referencing this Contract number. Purchase order(s) shall define and authorize the Work by the Contractor based on the prices contained in the bid. The purchase orders issued by the County may reflect agreed to modification of Contract terms, funding or other matters subject to subsection 3-2, Contract Changes.

**4-7 Pricing**

Prices for the initial Contract period Shall be as identified in the Allison Transmission Parts Price Schedule contained or referenced in [Exhibit A](#), "Bid" with the discount offered. Provide exact Price Schedule and indicated the discount offered to King County off the Price Schedule. At the time of the Bid the Bidder must identify: a) the Column that the discount will be applied b) if there are multiple discounts these individual discounts.

After the initial Contract period, the prices Shall be based on the original price schedule unless King County has evaluated and accepted a subsequent price schedule. Subsequent price schedules Shall be Provided to the Buyer and Project Manager for evaluation and determination that the prices are fair and reasonable. To facilitate the determination of fair and reasonable prices, the Buyer may require the Contractor Provide appropriate cost and pricing data and certify that the data submitted are accurate and current. If the revised price schedule is accepted by the County, Acceptance Will be, by incorporation of the new prices with the original discount structure in future orders or requisitions. If King County determines the prices contained in revised price lists are not fair and reasonable, King County may rebid the requirement or purchase the items through any other means available.

King County Will not be bound by prices contained in an invoice that are higher than those in the currently approved price schedule. If prior Acceptance of the higher price has not been done by King County, the invoice may be rejected and returned to the Contractor for a correct invoice.

**4-8 Shipping Charges**

All prices shall include freight FOB to the designated delivery point. The County shall reject requests for additional compensation for freight charges.

**4-9 Packing Slips**

Each delivery to the County Shall have a packing slip enclosed that identifies the requester, Contract number, requisition number, King County part number, unit price and quantity of each part shipped. If the delivery is a partial shipment, indicate on the packing slip that it is not a complete shipment of that requisition and identify the items not shipped and Provide a projected completion date of the requisition.

If the delivery combines items from more than one requisition, separate packing slips must be included in the shipment for each requisition. A packing slip Will not serve as an invoice. A separate invoice must be sent to Accounts Payable.



#### **4-10 Delivery Points**

This Contract requires all goods and/or services and supervision necessary to furnish the goods and services as set forth herein to be made to any sites in King County to be determined at the sole discretion of King County.

#### **4-11 Use Report**

The Contractor Shall, if requested, submit to the Procurement Services Division Buyer a quarterly report of sales made to King County under this Contract.

The report, in a format acceptable to King County, Shall identify the customer for each item purchased, the item description, whether it's a Contract or non-Contract item, quantity, price and discount.

#### **4-12 Warranty Provisions**

A. No Waiver of Warranties and Contract Rights.

Conducting of tests and inspections, review of Scope of Work or plans, payment for a Work, or Acceptance or Final Acceptance of the Work by the County shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve the Contractor from its warranty/guarantee responsibility.

B. Warranty Term.

The Contractor warrants that the Work performed under this Contract shall be free from defects in material and workmanship, and shall conform with all requirements of this Contract, for a period of twelve (12) months from date of Final Acceptance of such Work by the County. Any Work corrected shall be subject to this subsection to the same extent as the Work initially Provided.

C. Warranty Applicable to Third Party Suppliers, Vendors, Distributors and Subcontractors.

The Contractor shall ensure that the warranty requirements of this Contract are enforceable through and against the Contractor's suppliers, vendors, distributors and Subcontractors. The Contractor is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to the County by the Contractor and those extended to the Contractor by its suppliers, vendors, distributors and Subcontractors. Such inconsistency or difference shall not excuse the Contractor's full compliance with its obligations under this Contract. The Contractor shall cooperate with the County in facilitating warranty related Work by such suppliers, vendors, distributors and Subcontractors.

#### **4-13 Warranty Remedies**

If at any time during the twelve (12) Month period immediately following Acceptance of any Work covered by this Contract, Contractor or the County discovers one or more material defects or errors in the Work or any other aspect in which the Work materially fails to meet the provisions of the warranty requirements herein Contractor shall, at its own expense and within thirty (30) Days of notification of the defect by the County, correct the defect, error or nonconformity.

Notice Required. The County shall give written notice of any defect to the Contractor. If the Contractor has not corrected defect with thirty (30) Days after receiving the written notice, the County, in its sole discretion, may correct the defect itself. In the case of an emergency where the County believes delay could cause serious injury, loss or damage, the County may waive the written notice and correct the defect. In either case, the County shall charge-back the cost for such warranty repair to the Contractor.

The Contractor is responsible for all costs of repair or replacement in order to restore the Work to the applicable Contract requirements or Scope of Work, including shipping charges, for Work found defective within the warranty period, regardless of who actually corrects the defect.

#### **4-14 Defective Work**

Prior to Final Acceptance, when and as often as the County determines that the Work, furnished under the Contract is not fully and completely in accordance with any requirement of the Contract, it may give notice and description of such non-compliance to the Contractor. Within seven (7) Days of receiving such written notification, the Contractor shall supply the County with a detailed, written plan which indicates the time and methods needed to bring the Work in compliance with the Contract. The County may reject or accept this plan at its discretion. If the County rejects the plan the Contractor may be determined to be in material default of the Contract. This procedure to remedy defects is not intended to limit or preclude any other remedies available to the County by law, including those available under the Uniform Commercial Code, Title 62A RCW.

#### **4-15 Independent Status of Contractor**

In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit, which would accrue, to an employee under chapter 41.06 RCW or Title 51 RCW.

#### **4-16 Nondisclosure of Data**

Data provided by the County either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the County data in any form without the express written approval of the County.

#### **4-17 Non-Disclosure Obligation**

While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, Software, Documentation, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third (3rd) party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third (3rd) party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the County's or the third (3rd) party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

#### **4-18 Public Disclosure Requests**

Contracts shall be considered public documents and, with exceptions Provided under public disclosure laws, shall be available for inspection and copying by the public.

If a Contractor considers any portion of the Work, including Software, data and related materials, delivered to the County to be protected under the law, the Contractor shall clearly identify each such item with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such item, the County shall determine whether the material should be made available under the law. If the material or parts thereof are determined by the County to be exempt from public disclosure, the County shall not release the exempted documents. If the material is not exempt from public disclosure law, the County shall notify the Contractor of the request and allow the Contractor ten (10) Days to take whatever action it deems necessary to protect its interests. If the

Contractor fails or neglects to take such action within said period, the County shall release the item deemed subject to disclosure. By signing this Contract, the Contractor assents to the procedure outlined in this subsection and shall have no claim against the County on account of actions taken under such procedure.

#### **4-19 Pricing of Spare Parts**

The County shall have the right to conduct a cost or Price Analysis on specific spare parts if pricing appears to be in excess of standard industry pricing for similar parts. Any differences shall be subject to negotiations to the satisfaction of the County. The County is not required to purchase spare parts under this contract if it can purchase the same item(s) from another source under terms that are more advantageous to the County.

#### **4-20 Product Return**

The County reserves the right to return to the Contractor any unused goods for a period of 13 months after the date of receipt of the goods by the County.

Goods eligible for return to the Contractor shall have been purchased under this contract, be unused, and in the same general condition as when received. The County shall advise the Contractor in writing of its intent to return any goods before the expiration date of the Contract.

The Contractor is authorized a restocking fee not to exceed 15% of the original purchase price of the returned goods. The Contractor shall, at the County's option issue a credit or refund the dollar amount (less any restocking fee) to King County.

Any goods that have and OEM-designated time-sensitive shelf life must be clearly labeled with expiration date and must be delivered to the County with the original shelf life completely intact. The County will not return time sensitive goods if remaining shelf life is less than one year.

#### **4-21 No Prototype Components**

All hardware, Software and Work, shall be in production and be used by customers comparable to the County at the time of the Contract effective date. Test or prototype items shall be clearly identified as such. A sufficient inventory of the Work shall be available to meet delivery requirements.

#### **4-22 Hazardous Chemical Communication**

In order to comply with WAC 296-62-054, Hazard Communication, the Contractor shall prepare, a Material Safety Data Sheet (MSDS) for all products containing any toxic products that may be harmful to the end user. The MSDS Sheet is to accompany the toxic product(s) to the specified delivery sites.

In addition, the MSDS Shall be sent to BOTH of the following addresses:

Transit Safety  
Attention: Mike Wines  
Building A, Mail Stop: SAT-TR-0110  
11911 East Marginal Way South  
Seattle, WA 98168  
Phone: (206) 684-2915

Facilities Maintenance South  
Attention: Cathy Johnson  
Environmental Compliance  
Building C, Mail Stop: SFM-TR-0100  
11911 East Marginal Way South  
Seattle, WA 98168  
Phone: (206) 684-2266

Include the following information in the MSDS:

Chemical Abstract Service (CAS) numbers for every chemical that is listed in the MSDS.

If the product is actually used diluted, the rate should be so stated in the MSDS and the hazards and corresponding Personal protection, etc. also be listed.

SARA Title 3 chemicals shall be listed with the percentage by weight of the total product.

A statement as to the intended use of the product.

#### **4-23 Industrial and Hazardous Waste**

The Contractor shall comply with all applicable local ordinances, state and federal statutes, and supporting rules and regulations governing the discharge of industrial waste to a public sewer, private sewer, or side sewer tributary to the metropolitan sewerage system.

Contractor shall handle and dispose of all hazardous wastes in compliance with all applicable local, state and federal laws and regulations, including the Resource Conservation and Recovery Act, the Washington Hazardous Waste Management Act, and applicable rules and regulations of the Environmental Protection Agency and the Department of Ecology governing the generation, storage, treatment, transportation or disposal of hazardous wastes.

#### **4-24 Prohibition on Asbestos-Containing Products**

Asbestos-containing products shall not be Provided to the County under this Contract, unless no practicable alternative for the asbestos-containing product exists and the Contractor obtains the written consent of the County. The Contractor shall notify the County in writing at least sixty (60) Days before it plans to supply the County with an asbestos-containing product. The County shall respond to such notification within thirty (30) Days of receipt. The Contractor shall comply with applicable state, federal and local labeling and other laws, regulations and ordinances pertaining to asbestos-containing products, including, but not limited to, the State of Washington Industrial Safety and Health Act and the federal Occupational Safety and Health Act.

#### **4-25 Patents and Royalties**

The Contractor is responsible for paying all license fees, royalties or the costs of defending claims for the infringement of any intellectual property that may be used in performing this Contract. Before final payment is made on this Contract, the Contractor shall, if requested by the County, furnish acceptable proof of a proper release from all such fees or claims.

#### **4-26 Design Defects**

The County shall declare a design defect in the event that one percent (**1%**) of the items purchased under this Contract fail for the same failure. The County shall notify the Contractor of the defect in writing; the Contractor shall provide a modification, redesign or a plan to correct the defect within 20 Days of receipt of the notification.

The warranty period and terms for corrected items shall be the same as for the initial items purchased under this Contract. An extended Warranty on items determined to be design defects shall have the same term as the original warranty. This extended warranty shall begin on the correction of the defect.

If repairs or modifications made necessary by design defects are not completed for an extended period of time, the extended period of the lack of correction shall not be considered in computing the warranty end date. The same warranty shall remain in effect until a correction is implemented.

#### **4-27 Changed Requirements**

New Federal, State and County laws, regulations, ordinances, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well. Changed requirements shall be implemented through subsection 3-2, Contract changes.

## **SECTION 5 - INSURANCE REQUIREMENTS**

### **5-1 Evidence and Cancellation of Insurance**

Prior to execution of the Contract, the Contractor shall file with the County evidence of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance shall be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the County received notice at least 45 Days prior to the effective date of any cancellation, lapse or material change in the policy.

The Contractor shall, upon demand of the County, deliver to the County all such policy of insurance, and all endorsements and riders, and the receipts for payment of premiums thereon.

Failure to Provide such insurance in a timeframe acceptable to the County shall enable the County to suspend or terminate the Contractor's Work hereunder in accordance with Contract provisions regarding "Termination for Convenience/ Default/Non-appropriation." Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligations hereunder.

### **5-2 Insurance Requirements**

- A. The Contractor shall obtain and maintain the minimum insurance set forth below.

By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage shall apply to each insured to the full extent Provided by the terms and conditions of the policy(s). Nothing contained with this provision shall affect and/or alter the application of any other provision contained with this Contract.

For all coverages:

Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, Errors and omissions when required, may be acceptable on a "claims made" form.

If coverage is approved and purchased on a "Claims made" basis, the contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Contract.

- B. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. General Liability

Insurance Services Office form number (CG 00 01 Ed. 11-88) covering COMMERCIAL GENERAL LIABILITY.

2. Automobile Liability

Insurance Service form number (CA 00 01 Ed. 12-90) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8 and 9.

3. Workers' Compensation

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this Work by applicable federal or "Other States" State Law.

4. Employers Liability or "Stop Gap":

The protection Provided by the Workers Compensation Policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection Provided by the "Stop Gap" endorsement to the General Liability policy.

C. Minimum Limits of Insurance

The Contractor shall maintain limits no less than, for:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, Personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation: Statutory requirements of the state of residency.
4. Employers Liability Stop Gap: \$1,000,000.

D. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions shall be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor.

E. Other Insurance Provisions

The insurance policies required in this Contract are to contain, or be endorsed to contain the following provisions:

1. Liability Policies:

- a. The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Use the above exact language on the Endorsement Form.
- b. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the insurance or benefit the contractor in any way.
- c. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

F. Acceptability of Insurers

Unless otherwise approved by the County:

Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time one of the foregoing policies shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

G. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverages Provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.

H. Work Site Safety

The Contractor shall have the "right to control" and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable Federal, State and Local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for the Subcontractor's compliance with these provisions.

I. Endorsements

Endorsement must be included with insurance form, i.e. standard industry forms: "2010 111" or "GC 76 80 10 00. **The County requires this Endorsement to complete the Contract.**



## **SECTION 6 - FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS**

### **6-1 Applicability and Federal Grant Contract**

This procurement is subject to a financial assistance Contract between the County and the U.S. Department of Transportation. The successful Contractor is required to comply with all terms and conditions prescribed in third party Contracts in the grant Contract between the U.S. Department of Transportation and the County.

New federal laws, regulations, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing federal requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors comply with revised requirements as well.

### **6-2 No Federal Government Obligations to Third Parties**

The Contractor agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and Shall not be subject to any obligations or liabilities to the Contractor or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

The Contractor agrees to include the above clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause Shall not be modified, except to identify the subcontractor who Will be subject to its provisions.

### **6-3 Disadvantaged Business Enterprise (DBE) Participation**

The DBE requirements of 49 CFR Part 26 apply to this Contract. These requirements are described in Section 1, Instructions to Bidders.

### **6-4 Equal Employment Opportunity**

In connection with the execution of this Contract, the Contractor Shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor Shall take affirmative action to ensure that the hiring of applicants and treatment of employees during employment is conducted without regard to their race, color, creed, sex, disability, age, or national origin. Such action Shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all Subcontracts, except Subcontracts for standard commercial supplies or raw materials.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting officer setting forth the provisions of this non-discrimination clause.

(Authorities: Executive Order 11246, as amended by Executive Order 11375; Title VII of the Civil Rights Act, as amended, 42 USC § 2000e; Federal transit laws at 49 USC § 5332; section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623; section 102 of the Americans with Disabilities Act, as amended, 42 USC §§ 12101 et seq.; 29 CFR Part 1630; 41 CFR § 60-1.4).

### **6-5 Title VI Compliance**

The Contractor Shall comply with and Shall ensure the compliance by all Subcontractors under this Contract with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and the regulations of the federal Department of Transportation, "Nondiscrimination in Federally-

Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 CFR Part 21, (hereinafter "Regulations") as they may be amended from time to time.

During the performance of this Contract, the Contractor, for itself, its assignees and successors-in-interest agrees as follows:

A. Nondiscrimination

The Contractor, with regard to the Work performed by it during the Contract, Shall not discriminate on the grounds of race, color, creed, sex, disability, age or national origin in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. The Contractor Shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

B. Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for Work to be performed under a Subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier Shall be notified by the Contractor of the Contractor's obligations under this Contract and the regulations relative to nondiscrimination on the grounds of race, color, creed, sex, disability, age or national origin.

C. Information and Reports

The Contractor Shall Provide all information and reports required by the regulations or directives issued pursuant thereto and Shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such regulations, orders and instructions. The Contractor Shall maintain all required records for a least three (3) years after the County makes final payment and all other pending matters are closed. Where any information is required and it is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor Shall so certify to the County or the Federal Transit Administration, as appropriate, and Shall set forth efforts made to obtain the information.

D. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the County Shall impose such Contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or,

Cancellation, termination or suspension of the Contract, in whole or in part.

E. Incorporation of Provisions

The Contractor Shall include the provisions of paragraphs A through E of this section in every Subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Contractor Shall take such action with respect to any Subcontract or procurement as the County or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that, in the event the Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the County to enter into such litigation to protect the interests of the County, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## 6-6 Labor Provisions - Non-Construction Contracts

### A. Overtime Requirements

No Contractor or subcontractor Contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics Shall require or permit any such laborer or mechanic in any Work week in which he or she is employed on such Work to Work in excess of forty (40) hours in such Work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such Work week. (29 CFR § 5.5(b)(1)).

### B. Violation: Liability for Unpaid Wages: Liquidated Damages

In the event of any violation of the clause set forth in paragraph A of this section, the Contractor and any subcontractor responsible therefor Shall be liable for the unpaid wages. In addition, such Contractor and subcontractor Shall be liable to the United States (in the case of Work done under Contract for the District of Columbia or a territory, to such district or to such territory) for liquidated damages. Such liquidated damages Shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of paragraph A of this section in the sum of ten (\$10) dollars for each calendar Day on which such individual was required or permitted to Work in excess of the standard Work week of forty (40) hours without payment of the overtime wages required by paragraph A of this section. (29 CFR § 5.5(b)(2)).

### C. Withholding for Unpaid Wages and Liquidated Damages

The Department of Transportation or the County Shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of Work performed by the Contractor or subcontractor under any such Contract or any other federal Contract with the same prime Contractor, or any other federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph B of this section. (29 CFR § 5.5(b)(3)).

### D. Payrolls and Basic Records

The Contractor or subcontractor Shall maintain payrolls and basic payroll records during the course of the Work and Shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records Shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. Further, the records to be maintained under this paragraph Shall be made available by the Contractor or subcontractor for inspection, copying or transcription by authorized representatives of the Department of Transportation and the Department of Labor, and the Contractor or subcontractor Will permit such representatives to interview employees during working hours on the job. (29 CFR § 5.5(c)).

### E. Subcontracts

The Contractor or subcontractor Shall insert in any Subcontracts the clauses set forth in paragraphs A through E of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. The prime Contractor Shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through E of this section. (29 CFR § 5.5(b)(4)).

## **6-7 Cargo Preference – Use of U.S. Flag Vessels or Air Carriers**

In the event that ocean shipment or international air travel is required for any equipment, material or commodities pursuant to this Contract, the Contractor Shall:

Utilize privately owned United States-flag commercial vessels to ship at least fifty (50%) percent of the gross tonnage involved, computed separately for dry bulk carriers, dry cargo liners and tankers, whenever shipping any equipment, materials or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

Furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph A of this section, to the County, through the prime Contractor in the case of subcontractor bills-of-lading, and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, marked with appropriate identification of the project.

Utilize United States flag air carriers to the extent such carriers Provide the air transportation needed, or accomplish the Contractor's mission. The Contractor agrees to utilize United States flag air carriers even though comparable or a different kind of service can be provided at less cost by a foreign air carrier, a foreign air carrier is preferred by or more convenient for the Contractor, or service by a foreign air carrier can be paid for in excess foreign currency, unless United States flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of those monies.

Insert the substance of the provisions of this section in all Subcontracts issued pursuant to this Contract.

(Required by 46 CFR Part 381 and 41 CFR Part 301-3.6).

## **6-8 Audit and Inspection of Records**

In the case of all negotiated Contracts and Contracts for construction, reconstruction or improvement of facilities and equipment, which were entered into under other than competitive bidding procedures, Contractor agrees that the County, the Comptroller General of the United States or any of their duly authorized representatives, Shall, for the purpose of audit and examination be permitted to inspect all Work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records and accounts with regard to the project. Further, Contractor agrees to maintain all required records for at least three (3) years after the County makes final payment and all other pending matters are closed.

## **6-9 Buy America**

The Contractor agrees to comply with 49 USC § 5323(j), 49 CFR Part 661, which Provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

General waivers are listed in 49 CFR 661.7 and include but are not limited to final assembly in the United States for microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j) (2)(C) and 49 CFR 661.11.

Bids in excess of \$100,000 require Exhibit C - "Buy America" Certificate, be completed and submitted to the County with the bid, except those subject to a general waiver. Bids that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier Subcontractors.

## **6-10 FTA Protest Procedures**

Bidders are hereby notified that if this Contract is funded in whole or in part by the Federal Department of Transportation, the Federal Transit Administration (FTA) may entertain a protest that alleges that the County failed to have or follow written protest procedures. Bidders must file a protest with the FTA not later than 5 working days after the County renders a final decision or 5 working days after the Bidder knows or has reason to know that the County has failed to render a final decision. The protesting party must notify the County if it has filed a protest with the FTA. After 5 days, the County Will confirm with FTA that FTA has not received a protest. Protests to the FTA must be filed in accordance with FTA Circular 4220.1D (as periodically updated).

The County Will not award a Contract for 5 working days following its decision on a bid protest or while a protest to the FTA is pending unless the County determines that: (1) the items to be procured are urgently required; (2) delivery of performance Will be unduly delayed by failure to make the award promptly; or (3) failure to make prompt award Will otherwise cause undue harm to the County or the Federal Government.

## **6-11 Privacy**

Should the Contractor, or any of its Subcontractors, or their employees administer any system of records on behalf of the Federal Government, the Privacy Act of 1974, 5 USC § 552a, imposes information restrictions on the party administering the system of records.

For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, the recipient and any Contractors, third party Contractors, Subcontractors and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Contract Will make this Contract subject to termination.

The Contractor agrees to include this clause in all Subcontracts awarded under this Contract, which involve the design, development, operation, or maintenance of any system of records on individuals subject to the Act.

## **6-12 Access Requirements for Individuals with Disabilities**

The County and Contractors are required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

- U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities receiving or benefiting from Federal Financial Assistance," 49 CFR Part 27;
- U.S. Department of Transportation regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38;
- U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State of Local Government Services," 28 CFR Part 35;
- U.S. Department of Justice regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;

- U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and
- FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.

#### **6-13 Interest of Members or Delegates of Congress**

Pursuant to 41 USC § 22, no member of or delegate to the Congress of the United States Shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

#### **6-14 Certification Regarding Debarment, Suspension and Other Responsibility Matters**

Pursuant to Executive Order 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 note and federal regulations in 49 CFR 29, entities and individuals who are debarred or suspended by the federal government are excluded from obtaining federal assistance funds under this Contract. To assure that such entities and individuals are not involved as participants on this FTA-financed Contract, if the Contract exceeds \$100,000, each Bidder Shall complete and submit, as part of its bid, the certification contained in Attachment K for itself, its principals and its subcontractor(s) for any Subcontract in excess of \$100,000. The inability of a Bidder to Provide a certification in Attachment K Will not necessarily result in denial of consideration for Contract award. A Bidder that is unable to Provide a certification must submit a complete explanation attached to the certification form. Failure to submit a certification or explanation Shall disqualify the Bidder from participation under this bid. The County, in conjunction with FTA, Will consider the certification or explanation in determining Contract award. No Contract Will be awarded to a potential third-party Contractor submitting a conditioned debarment or suspension certification, unless approved by the FTA.

The certification is a material representation of fact upon which reliance is placed in determination of award of Contract. If at any time the Bidder or Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it Shall immediately Provide written notice to the County. If it is later determined that the Bidder knowingly rendered an erroneous certification, or failed to notify the County immediately of circumstances that made the original certification no longer valid, the County may disqualify the Bidder. If it is later determined that the Contractor knowingly rendered an erroneous certification, or failed to notify the County immediately of circumstances which made the original certification no longer valid, the County may terminate the Contract, in addition to other remedies available including FTA suspension and/or debarment.

#### **6-15 Subcontractors' Certification Regarding Debarment, Suspension or Ineligibility**

By submitting a bid for this Contract, the Bidder agrees that should it be awarded the Contract, it Shall not knowingly enter into any Subcontract exceeding \$100,000 with an entity or Person who is debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds; and Shall require each subcontractor to complete the certification provided in Attachment L.

Each Subcontract, regardless of tier, Shall contain a provision that the subcontractor Shall not knowingly enter into any lower tier Subcontract with a Person or entity who is debarred, suspended or declared ineligible from obtaining federal assistance funds, and a provision requiring each lower-tiered subcontractor to Provide the certification set forth in Attachment L.

The Contractor Shall require each subcontractor, regardless of tier, to immediately Provide written notice to the Contractor if at any time the subcontractor learns that its, or a lower-tier certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor may rely upon the certifications of the Subcontractors unless it knows that a certification is

erroneous. The Contractor's knowledge and information regarding any subcontractor is not required to exceed that which is normally possessed by a prudent Person in the ordinary course of business.

#### **6-16 Disclosure of Lobbying Activities**

Bids in excess of \$100,000 require Attachment I, "Certification Regarding Lobbying," and Attachment J, "Disclosure of Lobbying Activities" (if appropriate), be completed and submitted to the County with the bid, as required by 49 CFR Part 20, "New Restrictions on Lobbying."

The Contractor certifies that it Will not and has not used Federal appropriated funds to pay any Person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by the Byrd Anti-Lobbying Amendment, 31 USC § 1352. The Contractor Shall disclose the name of any registrant under the Lobbying Disclosure Act of 1995, codified at 2 USC § 1601 et seq., who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Contract, grant or award covered by 31 USC § 1352. Such disclosures are to be forwarded to the County.

The Contractor Will include the language of this certification in all Subcontract awards at any tier and require that all recipients of Subcontract awards in excess of \$100,000 Shall certify and disclose accordingly.

#### **6-17 Anti-Kickback**

The County and Contractors are required to comply with the Anti-Kickback Act of 1986, 41 USC §§ 51 et seq. Under state and federal law, it is a violation for County employees, bidders, Contractors or Subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a Contract or the purchase of goods or services.

"Kickback" as defined by Federal Acquisition Regulation (FAR) 52.203-7, and 41 USC § 52(2), means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to any prime Contractor, prime Contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime Contract or in connection with a Subcontract relating to a prime Contract.

#### **6-18 False or Fraudulent Statements or Claims**

The Contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the County in connection with this project, the County reserves the right to pursue the procedures and impose on the recipient the penalties of 18 USC § 1001, 31 USC §§ 3729 and 3801 et seq., and/or 49 USC § 5307(n)(1), as may be appropriate. The terms of Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, are applicable to this project.

The Contractor agrees to include this clause in all Subcontracts awarded under this Contract.

#### **6-19 Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321 et seq.

The Contractor agrees to include this clause in all Subcontracts awarded under this Contract.

## **6-20 Air Pollution**

The Contractor and suppliers may be required to submit evidence to the Project Manager that the governing air pollution criteria Will be met. This evidence and related documents Will be retained by the manager for on-site examination by FTA.

## **6-21 Environmental Requirements**

The Contractor agrees to comply with all applicable standards, orders or requirements as follows:

### **A. Environmental Protection**

The Contractor agrees to comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321, *et seq.*, consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 USC § 4321 note. FTA statutory requirements on environmental matters at 49 USC § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 42 USC § 4321 *et seq.* and 40 CFR Part 1500 *et seq.*; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622.

### **B. Air Quality**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401, *et seq.* The Contractor agrees to report each violation to the County and understands and agrees that the County Will, in turn, report each violation as required to assure notification to FTA and the appropriate U.S. Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to include this clause in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### **C. Clean Water**

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§ 1251 *et seq.* The Contractor agrees to report each violation to the County and understands and agrees that the County Will, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 USC §§ 300h *et seq.* The Contractor agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

### **D. Use of Public Lands**

The Contractor agrees that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the federal, state or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used for the Project unless the FTA makes the specific findings required by 49 USC § 303.

### **E. Historic Preservation**

The Contractor agrees to assist the Federal Government in complying with section 106 of the National Historic Preservation Act, as amended, 16 USC § 470f, Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 USC § 470 note, and the



Archaeological and Historic Preservation Act of 1974, as amended, 16 USC §§ 469a-1 et seq. involving historic and archaeological preservation as follows:

1. The Contractor agrees to consult with the State Historic Preservation Officer about investigations to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, in accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 CFR Part 800, and notifying FTA of those properties so affected.
2. The Contractor agrees to comply with all federal requirements to avoid or mitigate adverse effects on those historic properties.

**F. Mitigation of Adverse Environmental Effects**

The Contractor agrees that if the Project should cause adverse environmental effects, the Contractor Will take all reasonable steps to minimize those effects in accordance with 49 USC § 5324(b), and all other applicable federal laws and regulations, specifically, the procedures of 23 CFR Part 771 and 49 CFR Part 622.

**G. Energy Conservation**

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321, et seq.

**6-22 Preference for Recycled Products**

To the extent practicable and economically feasible, the Contractor agrees to Provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described in the EPA Guidelines at 40 CFR Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962, and Executive Order 12873.

**6-23 Incorporation of FTA Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation, whether or not expressly set forth in the preceding Contract provisions. All Contractual provisions required by the U.S. Department of Transportation, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms Shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor agrees not to perform any act, fail to perform any act, or refuse to comply with any County requests that would cause the County to be in violation of the FTA terms and conditions.

## SECTION 7 - TECHNICAL SPECIFICATIONS (STATEMENT OF WORK)

### 7-1 General

The contractor shall supply and deliver to King County on an as needed basis Allison Transmission Parts, in accordance with the specifications, terms and conditions defined herein during the term of the contract. The Allison transmission parts shall meet or exceed the OEM manufacturer's minimum specification and conform to all applicable industry and safety standards. The estimated annual value of this contract is \$800,000.

### 7-2 OEM Allison Transmission Parts

OEM Allison transmission parts are the only approved product. Firms bidding other manufacturer's products will be considered non-responsive.

### 7-3 Allison Transmission and Hybrid Electric Drive Models

King County runs a bus fleet with 1094 Allison Transmissions.

<u>Allison Transmission-Part Number</u>	<u>Serial Number</u>	<u>Quantity</u>	<u>Year in Service</u>
B400R WTEC 111-E002979 or 29535105 .....	6510240629.....	95 .....	1999
B400R WTEC111-E002980.....	6510213404.....	51 .....	1998
B400R WTEC111-29528113 .....	6510100961.....	360 .....	1996
B400R WTEC111-E003373.....	6510173982.....	50 .....	1998
B500R WTEC111-E001316 or 29519900.....	6610032821.....	273 .....	1998
B500R WTEC111-E004651.....	6610067971.....	27 .....	2000
B500RWTEC111 .....	6610140697.....	30 .....	2004
EV50 Drive System.....	7110001015.....	213 .....	2004
EV50 Drive System.....	7110001207.....	22 .....	2004

### 7-3 Ordering Requirements/Delivery Requirements

Parts to be furnished under this contract shall be ordered by issuance of purchase orders by King County, Transit Materials Management Buyers to the contractor. Such orders may be issued any time during the contract period. All purchase orders are subject to the terms and conditions of this contract. In the event of conflict between a purchase order and this contract, the contract shall control. A purchase order is considered issued when King County receives the confirming fax from the contractor.

The Transit Materials Management Buyer shall receive order confirmation from the Contractor by individual line item via fax within 24 hours of order placement. The Contractor shall also give the Transit Materials Management Buyer the expected delivery date, by line item within 3 working days after order confirmation. Delivery of the parts shall be within 30 days of order placement. Orders not received by the expected delivery date are subject to complete or partial cancellation by King County without any penalty from the Contractor.

### 7-4 Buy America

This procurement is subject to the Federal Transit Administration Buy America requirements. A Buy America Certificate, Exhibit C, shall be completed and submitted with the bid. A bid that does not include this certificate or a certificate that is not correctly completed must be considered non-responsive and rejected.

#### **7-5 Site Visits/Business Plan**

Prior to contract award and periodically during the contract period, King County may request a site visit. King County may request a business plan showing how the contractor will meet the needs of Transit Materials Management. This may include the Contractors inventory plans, stock levels, and emergency/equipment down procedures.

#### **7-6 References**

Bidders shall include in their bid response three customers for whom the offeror has provided similar products, preferably in Washington State, for a period of no less and one year. Include dates, contact persons and telephone numbers. Should any reference submitted by an offeror be found unsatisfactory, King County, at its sole option, may reflect that offerors offer. King County shall be the sole judge in determining a satisfactory/unsatisfactory reference response. References must be submitted with offer.

#### **7-7 Price List**

Bidders shall include, with their bid, a current Allison Transmission Parts Price Schedule showing the list price.



## BID OPENING LABEL

Complete the form below (or a reasonable facsimile thereof) and affix to the exterior lower left hand corner of the submission package.

<b>URGENT – SEALED BID ENCLOSED</b> <b>Do Not Delay – Deliver Immediately</b>	
<b>URGENT</b>	 <b>King County</b> King County Procurement & Contract Services Section Exchange Building, 8 <sup>th</sup> Floor 821 2nd Ave., EXC-FI-0862 Seattle, WA 98104-1598
	<b>Bid No.</b> 05-089 MM
	<b>Bid Title</b> Allison Transmission Parts
	<b>Due Date</b> <b>Vendor</b>
<b>URGENT</b>	